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REMARKS

Claims 1-15 and 17 stand rejected in the Final Office Action as anticipated by U.S. Patent No. 5,974,454 to Apfel et al. ("Apfel"), and Claim 16 stands rejected as obvious based on Apfel in view of U.S. Patent No. 6,110,228 to Albright ("Albright"). Applicants submit the present *Request for Reconsideration* to comment on the positions raised in the *Response to Arguments* section of the Final Office Action, which Applicants believe reflect a misunderstanding of the teachings of Apfel. Accordingly, for the reasons set forth below, Applicants respectfully submit that all of the pending rejections should be withdrawn.

I. The Rejection of Claim 1 Should be Withdrawn

As discussed in Applicants' *Amendment* dated March 8, 2005, the contents of which are incorporated by reference herein, Apfel does not disclose or suggest a "second sub-system for creating at least one software product package from the identified software components identified by the first sub-system" ("the second sub-system recitation"). Both the First Office Action and the Final Office Action cite to Column 9, lines 35-41 of Apfel as disclosing the second sub-system recitation of Claim 1. The *Response to Arguments* section of the Final Office Action explains the basis for concluding that Apfel discloses the second sub-system recitation as follows:

In col. 9:35-41, Apfel discloses using information received in the database query (i.e., versions of the program components, and operating system on which the components are running) to determine whether upgrade package is available. In the same passage, Apfel further discloses providing different update packages for different version combinations, different operating systems. It is clear that the update package for different version combinations and different operating systems (as identified by the database query or "first sub-system") *have to be created in order to meet the update demand* of target software execution units.

(Final Office Action at 3, underline in original, bold and italics added). Applicants respectfully submit that the concluding sentence in the argument quoted above does not follow either from the sentences that precede it, nor is it supported by the disclosure of Apfel. Accordingly, as the Final Office Action has not and cannot show that Apfel discloses or suggests the second sub-system recitation of Claim 1, the rejection of Claim 1 should be withdrawn.

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Applicants agree that Apfel discloses (1) using information contained in a database query to determine whether an upgrade is available and (2) that the system of Apfel may select an appropriate one of several different upgrade for a particular software program, where the update selected matches, for example, the operating system used on the target computer and/or the version of the software that is presently installed on the target computer. Applicant further agrees that the update packages that are discussed in Apfel "have to be created" at some point in time. However, what the Final Office Action never explains, and what Apfel does not disclose, is "creating at least one software product package from the identified software components identified by the first sub-system" as recited in the second sub-system recitation of Claim 1.

Instead, what Apfel discloses is a system that includes a Package Server 80b that stores a variety of different upgrades. The Database Server tells a target computer which of the different upgrades stored on the Package Server that it should request based on the version of the software loaded on the target computer, the operating system used by the target computer, etc. The Packaging Server of Apfel does not create the upgrade package from identified building block components that are stored in a central repository as recited in Claim 1. Accordingly, the rejection of Claim 1 should be withdrawn.

Applicants note that the Office Action states:

It is clear that the update package for different version combinations and different operating systems (as identified by the database query or "first sub-system") have to be created in order to meet the update demand of target software execution units.

(Final Office Action at 3). Thus, it appears that the Final Office Action takes the position that the query 100 of Apfel identifies "software components" that are used to create the "at least one software product package." Apfel, however, simply never discloses or suggests that the different update packages are created from software components that are identified by the database query. Instead, Apfel makes crystal clear that the query is not made to identify software components that can be used to create a software package as recited in Claim 1 – instead the query is made to determine if an updated version of a specific version of a software package that runs on a specific operating system is already available. (See, e.g., Apfel at Abstract, noting that a "database lookup" is performed in response to the query to see if an updated software program is currently available and, if so, it is installed on the target computer). Moreover, it clearly is not

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"inherent" (i.e., necessarily the case) that Apfel must create the software package in response to the query. Instead, the system of Apfel could clearly work (as Apfel states that it works) by having the target computer, on a preprogrammed date, send a query to see if an upgraded software package is available. The Database Server then responds to the query by either stating that no update is available or by providing a URL of an already existing update package. (*See* Apfel at Col. 6, lines 38-67). Such a system does not create a software product package from software components that are identified by the database query.

If the Examiner declines to withdraw the pending rejection of Claim 1, Applicants respectfully request that the Examiner specifically identify the passage(s) in Apfel that the Examiner contends disclose or suggest (1) that the first sub-system (which the Final Office Action states is the query 100 of Apfel) identifies specific software components and (2) that the "at least one software product package" is created from the software components that are identified by the first sub-system.

Applicants also respectfully submit that the rejection of Claim 1 should be withdrawn because Apfel further does not disclose or suggest "a first sub-system for identifying within the central repository software components of a software product to be delivered" (the "first sub-system recitation"). The Final Office Action states that the database query 100 of Apfel comprises the first sub-system. (*See, e.g.,* Final Office Action at 2). Even were this correct, the query 100 does not identify "software components" – instead, it provides information which the Database Server uses to identify the appropriate upgrade package. Accordingly, Apfel's failure to disclose or suggest the first sub-system recitation of Claim 1 provides a further basis for withdrawal of the pending rejection of Claim 1.

II. The Rejections of Claims 2-7 Should be Withdrawn

Applicants have also carefully considered the rejections of Claims 2-7 set forth in the First and Final Office Actions and the response provided to Applicants' arguments regarding the impropriety of these rejections. After this careful review, Applicants still believe that the rejections are not supportable, and thus respectfully request that the Examiner reconsider these rejections in light of the following comments.

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As an initial matter, Claims 2-7 each depend from Claim 1 and hence are patentable over Apfel for at least the reasons that Claim 1 is patentable. Additional reasons that at least Claims 2, 3, 5 and 6 are independently patentable over Apfel are provided in Applicants *Amendment* of March 8, 2005, and are incorporated herein by reference. Applicants further provide the following comments on the portions of the *Response to Arguments* section of the Final Action directed to the rejections of Claims 2-7.

In the Final Office Action, the Examiner responds to Applicants argument that the product updates stored in the Package Server cannot properly be identified as both "software components of at least one software package" and as "software product packages" as has been argued in the pending rejection of Claim 2. Specifically, the Examiner argues that the Package Server stores "upgrade packages" which are identified as "at least upgrade, program modules, query, versions of program module components, Web Authoring Components Program Module, word processor program module and HTML converter." (Final Office Action at 4). The Examiner argues that the Package Server also stores "software components" which are identified as "program module components" (citing to Col. 6, lines 18-25 of Apfel) which are argued to be something different. However, this is simply not the case.

Instead, it is clear that the "program modules", "program module components", "versions of program module components", the "Web Authoring Components program module", the "word processor module" and the "HTML converter" of Apfel are all software programs that may be running on a target computer.¹ These software programs are generally referred to as "program module components" in Apfel (or sometimes by the shortened notation, "program modules"), and it is upgraded versions of these program modules that are stored on the Package Server. References to "versions of program module components" reflects that a particular software program may have multiple versions. The "Web Authoring Components program module", the "word processor module" and the "HTML converter" are all specific program module components (i.e., software programs) that are provided as examples in Apfel. As the above discussion makes clear, the rejection of Claim 2 is pointing to the same thing - the upgrades

¹ The Final Office Action also states that the query 100 of Apfel comprises an upgrade package. This clearly is not the case - the query is a request for a URL of an upgrade package. (See Apfel at Col. 6, lines 49-53).

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stored on the Package Server – as comprising both the "software components" and the "software product packages" of Claim 2. As such, the arguments raised in the Final Office Action do not rebut Applicants showing that the rejection of Claim 2 is improper.

In response to the rejection of Claim 3, the Examiner argues that "each software product package is associated with an operating system on which it is to run (i.e., 'assigned a role')." (Final Office Action at 4). Assuming, for purposes of argument, that this statement is correct, it still does not establish that Apfel discloses or suggests that the "at least one role" is "assigned to the at least one software product package by the second sub-system" as recited in Claim 3. Applicants respectfully request that the Examiner identify where Apfel discloses that the alleged role (i.e., operating system of the target computer) is assigned to the target computer by the second sub-system. Applicants submit that no such teaching is provided in Apfel, because it is axiomatic that the Package Server of Apfel does not assign operating systems to the target computers.

With respect to the rejection of Claim 6, the Final Office Action states that "a process of applying changes to an already delivered software product" merely refers to the process of installing an upgrade package on the target computer. Applicants respectfully submit that "installing" and "applying changes to" a software product are two very different things, as is made clear in the specification of the present application. (See, e.g., Specification at 12-13 and 20). Accordingly, Claim 6 is also independently patentable over the cited art for at least these additional reasons.

III. Claims 8-11 Are Patentable Over Apfel

Claims 8-11 stand rejected based on the same rationale as Claim 1-3 and 5. Accordingly, the rejections of Claims 8-11 should be withdrawn for at least the reasons, discussed above, that the rejections of Claims 1-3 and 5 should be withdrawn.

IV. Claims 12-17 are Patentable Over the Cited Art

Claim 12 stands rejected in the Final Office Action as anticipated by Apfel. The rejection merely incorporates the rejection of Claims 1 and 2. Accordingly, the rejection of Claim 12 should be withdrawn for each of the reasons, discussed above, that the rejections of Claims 1 and

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2 should be withdrawn. Applicants further note that Apfel clearly does not teach (1) storing a plurality of components in a central repository, and then (2) building a "built software product" using the software components and storing the "built software product" back in the central repository and then (3) creating an installable software package that includes the built software product and storing this installable software package in a second repository. Applicants respectfully request that, if the Examiner does not withdraw the pending rejection of Claim 12, the Examiner should specifically identify what in Apfel comprises (1) the software components, (2) the built software product, (3) the installable software package (which Applicants understand the Examiner contends is taught by the upgrade program modules of Apfel), (4) the central repository and (5) the second repository.

The rejections of Claims 13-17 should be withdrawn as depending from a patentable base claim. In addition, the rejections of at least Claims 14 and 15 should be withdrawn for the independent reasons set forth below.

The rationale for the rejection of Claim 6 is provided as the basis for the rejection of Claim 14. Accordingly, the rejection of Claim 14 should also be withdrawn for the independent reason that the rejection of Claim 6 should be withdrawn.

Claim 15 recites that the method of Claim 12 "further compris[es] recording information regarding the software product in a tracking sub-system." The Final Office Action states that this is disclosed at Col. 2, lines 50-61 of Apfel. (Final Office Action at 9-10). However, what the cited portion of Apfel in fact states is that the installed upgrade package includes a new date embedded there in (in a "registry key") that is used to determine when in the future to check for additional updates. The inclusion of a date in the upgraded software package itself clearly does not comprise "recording information regarding the software product in a tracking sub-system."

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V. Conclusion

For the reasons discussed above, Applicants respectfully request that the Examiner reconsider and withdraw the pending rejections, and pass the present application to allowance.

Sincerely,

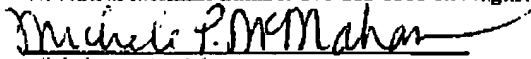


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